

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KENNETH GIBBS,  
Plaintiff,  
  
v.  
  
T. WOOD, et. al.,  
Defendants.

Case No. [15-cv-4115-TEH](#)

ORDER OF DISMISSAL WITH LEAVE  
TO AMEND

Plaintiff, an inmate at California State Prison-Los Angeles County, filed this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. His complaint is now before the Court for initial screening pursuant to 28 U.S.C. § 1915A.

I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pleadings filed by pro se litigants, however, must be liberally construed. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010);

1 Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir.  
2 1990).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
4 allege two essential elements: (1) that a right secured by the  
5 Constitution or laws of the United States was violated, and (2)  
6 that the alleged violation was committed by a person acting under  
7 the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

8 II

9 Plaintiff describes three different incidents where he  
10 alleges he was subject to retaliation or defendants were  
11 deliberately indifferent to his serious medical needs.

12 "Within the prison context, a viable claim of First  
13 Amendment retaliation entails five basic elements: (1) an  
14 assertion that a state actor took some adverse action against an  
15 inmate (2) because of (3) that prisoner's protected conduct, and  
16 that such action (4) chilled the inmate's exercise of his First  
17 Amendment rights, and (5) the action did not reasonably advance a  
18 legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559,  
19 567-68 (9th Cir. 2005) (footnote omitted). Accord Pratt v.  
20 Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (prisoner suing prison  
21 officials under § 1983 for retaliation must allege that he was  
22 retaliated against for exercising his constitutional rights and  
23 that the retaliatory action did not advance legitimate  
24 penological goals, such as preserving institutional order and  
25 discipline).

26 Deliberate indifference to serious medical needs violates  
27 the Eighth Amendment's proscription against cruel and unusual  
28 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin

1 v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other  
2 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136  
3 (9th Cir. 1997) (en banc). A determination of "deliberate  
4 indifference" involves an examination of two elements: the  
5 seriousness of the prisoner's medical need and the nature of the  
6 defendant's response to that need. Id. at 1059.

7 Federal Rule Civil Procedure 18(a) provides: "A party  
8 asserting a claim to relief as an original claim, counterclaim,  
9 cross-claim, or third-party claim, may join, either as  
10 independent or as alternate claims, as many claims, legal,  
11 equitable, or maritime as the party has against an opposing  
12 party." "Thus multiple claims against a single party are fine,  
13 but Claim A against Defendant 1 should not be joined with  
14 unrelated Claim B against Defendant 2." George v. Smith, 507  
15 F.3d 605, 607 (7th Cir. 2007). "Unrelated claims against  
16 different defendants belong in different suits[.]" Id.

17 It is true that Fed. R. Civ. P. 20(a) provides that  
18 "[p]ersons ...may be joined in one action as defendants if: (A)  
19 any right is asserted against them jointly, severally, or in the  
20 alternative with respect to or arising out of the same  
21 transaction, occurrence, or series of transactions or  
22 occurrences; and (B) any question of law or fact common to all  
23 defendants will arise in the action." However, "[a] buckshot  
24 complaint that would be rejected if filed by a free person - say,  
25 a suit complaining that A defrauded the plaintiff, B defamed him,  
26 C punched him, D failed to pay a debt, and E infringed his  
27 copyright, all in different transactions - should be rejected if  
28 filed by a prisoner." Id. at 607.

1 In this action Plaintiff has presented unrelated claims  
2 against several defendants. The complaint will be dismissed with  
3 leave to amend. Plaintiff should focus on related incidents and  
4 he must identify the specific actions of the defendants and  
5 describe how they violated his constitutional rights. He must  
6 present more than conclusory allegations. As currently  
7 presented, the allegations fail to state a claim.

8 A "plaintiff's obligation to provide the 'grounds' of his  
9 'entitle[ment] to relief' requires more than labels and  
10 conclusions, and a formulaic recitation of the elements of a  
11 cause of action will not do. . . . Factual allegations must be  
12 enough to raise a right to relief above the speculative level."  
13 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)  
14 (citations omitted). A complaint must proffer "enough facts to  
15 state a claim to relief that is plausible on its face." Id. at  
16 570. The United States Supreme Court has explained the  
17 "plausible on its face" standard of Twombly: "While legal  
18 conclusions can provide the framework of a complaint, they must  
19 be supported by factual allegations. When there are well-pleaded  
20 factual allegations, a court should assume their veracity and  
21 then determine whether they plausibly give rise to an entitlement  
22 to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

23 III

24 For the foregoing reasons, the Court hereby orders as  
25 follows:

26 1. Plaintiff's Complaint is DISMISSED WITH LEAVE TO FILE A  
27 FIRST AMENDED COMPLAINT, within twenty-eight days containing all  
28 related claims against all Defendants that Plaintiff wishes to

1 proceed against in this action. The pleading must state clearly  
2 how each and every Defendant is alleged to have violated  
3 Plaintiff's federally-protected rights. See Leer, 844 F.2d at  
4 634. The pleading must include the caption and civil case number  
5 used in this order and the words COURT ORDERED FIRST AMENDED  
6 COMPLAINT on the first page. Plaintiff is advised that he must  
7 file all of his claims in one complaint and not present them  
8 piecemeal to the Court in various letters and other documents.  
9 Failure to file a proper First Amended Complaint within twenty-  
10 eight days of this order will result in the dismissal of this  
11 action without prejudice.

12 2. Plaintiff is advised that the First Amended Complaint  
13 will supersede the original Complaint and all other pleadings.  
14 Claims and defendants not included in the First Amended Complaint  
15 will not be considered by the Court. See Lacey v. Maricopa  
16 County, 693 F.3d 896 (9th Cir. 2012) (en banc) ("For claims  
17 dismissed with prejudice and without leave to amend, we will not  
18 require that they be repled in a subsequent amended complaint to  
19 preserve them for appeal. But for any claims voluntarily  
20 dismissed, we will consider those claims to be waived if not  
21 repled.").

22 3. It is Plaintiff's responsibility to prosecute this  
23 action. Plaintiff must keep the Court informed of any change of  
24 address by filing a separate paper with the Clerk headed "Notice  
25 of Change of Address," and must comply with the Court's orders in  
26 a timely fashion. Failure to do so may result in the dismissal  
27  
28

1 of this action for failure to prosecute pursuant to Federal Rule  
2 of Civil Procedure 41(b).

3 IT IS SO ORDERED.

4 Dated: 11/16/2015



THELTON E. HENDERSON  
United States District Judge

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